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of the community. The court also held that it does not violate the constitutional provision which prohibits class legislation, is not objectionable as a denial to owners of property equal protection of the laws, and is not a violation of the constitutional provision that property shall be taxed according to its value in money, and that all taxation shall be equal and uniform.

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### MISCELLANY.

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**The Right of Asylum.**—The admitted and generally recognized principles of international law have not altered the meaning or the effect of the right of asylum, that sovereign right possessed alike by civilized and uncivilized countries. The word asylum still retains its old signification of a place of safety from pursuit, and a protection to all who come within its borders. The territory of a foreign country is an asylum for refugees, political or other, but it is of course subject to the law and treaties of extradition, and to the right of expulsion, the latter, by the almost universal comity of nations, being in many cases an inherent, and in others a reserved, right which all nations claim per se as their own. The right of asylum is a necessary consequence of the inviolability of neutral territory, and we find in Latin and Greek history instances where the right was claimed and acknowledged. It is also used in international law as what, for want of a better word, may be described as the cover extended by neutral territory to belligerent fugitives.

The practice of different countries is as a rule uniform, the only difference arising when land forces as distinguished from naval forces are concerned. For example, in the former case, a neutral state may at all times receive individuals belonging to the states that are at war with each other, and even the forces thereof, provided its position as a neutral be recognized. Hostilities on that territory cannot be resumed, and the custom is to disarm the refugee forces. In the latter case, a belligerent war vessel may undergo repair and take in such coal and provisions as she needs in a neutral port, and the latter, in not actively preventing the vessel from resuming fighting operations, does not contravene the generally accepted law of nations.

The right of asylum is an apt illustration of the rule of international law that a state is at liberty to do whatever it likes within the confines of its own territory, regardless of the opinions or wishes of other states, so long as its acts do not operate injuriously or prejudicially to their interests and rights.

The cloak of asylum equally covers emigrants and refugees and whether or not the former have broken the laws of their own coun-

try in departing from it, and whether the latter are accused of political or non-political crimes, are equally irrelevant to the exercise of the vested right each nation thereby possesses. It is the state to whom the individual applies for leave to enter its territory that alone decides as to whether that privilege shall be granted. The only apparent exception to this rule appears to be that of a person in custody. The converse is equally true that the mere possession and existence of the right invests every state with the power of refusal to receive any or all foreigners. To exercise this right indiscriminately would be to isolate the state so acting; but the exercise of the right on reasonable and probable cause, in circumstances not only warranting such a course of action, but justifying it, is, it may be conceded, more than clear. Although states are by no means in accord or in unison in the matter, it would appear that the ends of justice would be the more easily met and satisfied, if persons who have been accused of crime, and fled from their own to a foreign country, should be delivered up by the latter for trial. Although this is the more prudent course, and therefore the more commendable; it is very doubtful if there is any legal duty incumbent on, or imposed upon, states of extraditing such criminals. Express agreements have been entered into between certain countries whereby it is therein provided that criminals shall be delivered up for certain named crimes, and under specified conditions, and these agreements are invariably acted upon by the nations who are parties thereto. It would appear that the Fugitive Offenders Act, 1881<sup>1</sup> infringes the right of asylum of Oriental countries. The Aliens Act<sup>2</sup> is a good illustration of the power which a country has of regulating and laying down the conditions under which foreigners shall enter a country, and the penalties they incur by evading or failing to fulfil these conditions. The admission of foreigners to a particular country carries in its train the right, often exercised, of granting them the status and the privileges of subjects of the state they enter; and here again Parliament has provided for this by the Naturalization Act of 1870. But the limits of the powers of such a state are clearly defined and restricted by the fact that the state cannot impose the duties of nationality, nor divest the foreign subject of his nationality of origin. It appears to be established by authority that the house of a diplomatic agent gives no protection either to ordinary criminals or to persons accused of state crimes. Asylum to political refugees in the houses of diplomatic agents still exists in the Spanish-American republics; and in modern times the right has been recognized and acted upon in 1841, and in 1848, 1865, and 1875, in Madrid; in 1862 in Greece; in the United States in 1873; and in England in 1910. In 1862 a British ship, on the outbreak

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1. 44 & 45 Vict. c. 69.

2. 1905, 5 Edw. VII.

of a revolution in Greece, escorted a Greek man-of-war, with the King and Queen on board, out of Greek waters, and granted them hospitality. The right of asylum is that of the state and not of the foreigner; and the latter cannot insist that protection should be extended to him as a matter of right; he can only ask that it should be conferred upon him as an act of grace, which as a matter of fact and of custom is frequently refused. It is strange to find that the right of asylum with regard to envoys who claimed the power to grant the right within the confines of their residential quarters was not, in the opinion of Grotius, recognized by the law of nations, because he says<sup>3</sup> with regard to it: "*Ex concessione pendet eius apud quem agit. Istud enim iuris gentium non est.*"

Although foreigners who thus enter a country or state in circumstances and conditions such as these are bound by the laws of the country or state they so enter, there is a class of foreigner who is not liable to the jurisdiction or amenable to the laws of such a country, and that class of foreigner is the foreigner to whom the laws of extritoriality apply. This fiction of the law was attempted to be carried to its furthest limit in 1867, when a Russian subject named Mickilchenkorff, being guilty of an attempt to murder in the Russian embassy at Paris, and having been arrested and his prosecution commenced by the French police, the ambassador disputed their competence and claimed his extradition. The French government, however, refused to admit that the fiction of extritoriality could be so widely extended, and that notwithstanding that at the time of the attempt the Russians had themselves invoked the aid of the local force. The rule of international law as not permitting asylum in legations to either foreign criminals or political refugees has been well settled by two cases, one in 1726, and the other in 1747, both reported.<sup>4</sup> In the former the Spanish government forced an entrance into the British embassy at Madrid, in order to effect the arrest of the Duke of Ripperda, whose surrender had been refused; and, in the latter the Swedish government endeavoured to arrest Springer, charged with treason, who had sought asylum in the British embassy at Stockholm, and the ambassador surrendered him under protest.

The High Court of Justice has, for example, subject to certain exceptions, no jurisdiction to entertain an action or other proceeding against any foreign sovereign;<sup>5</sup> any ambassador or other diplomatic agent representing a foreign sovereign and accredited to the

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3. Bk. II, c. 18, s. 8.

4. 1 Calvo, s. 571.

5. Martens, 1 *Causes Célèbres*, 174.

6. *Mighell v. Sultan of Johore*, [1894] 1 Q. B. 149, C. A.; and see *Foster v. Globe Venture Syndicate*, [1900] 1 Ch. 811; *The Jassy*, [1906] p. 270.

Crown;<sup>7</sup> any person belonging to the suite of such ambassador or diplomatic agent.<sup>8</sup> The property of a foreign sovereign cannot be seized or arrested.<sup>9</sup> In the case of the *Duke of Brunswick v. King of Hanover*<sup>10</sup> the defendant was not only a foreign sovereign but also a British peer; and the House of Lords (Cottenham L. C., Lords Lyndhurst, Brougham, and Campbell) unanimously affirmed the decision of the Master of the Rolls (Lord Langdale) that the respondent being a foreign sovereign, coming to England, cannot be made responsible in the Courts there for acts done by him, in his sovereign character, in his own country, in virtue of his authority as a sovereign, and not as a British subject. The question remains whether the privilege of a foreign sovereign not to be sued for acts done in his private capacity, qua sovereign, continues after he has ceased, e. g. by abdication, to be a sovereign.<sup>11</sup> The privilege of the ambassador extends to all persons associated in the performance of the bona fide duties of an embassy or legation. Thus, a charge d'affaires,<sup>12</sup> a secretary,<sup>13</sup> or a chorister employed in the chapel of an embassy,<sup>14</sup> is privileged. The incurring of debts,<sup>15</sup> the breach of a promise to marry,<sup>16</sup> the running down of an English boat by a foreign one in Dover Harbour<sup>17</sup>—in all these cases no action lies. Similarly, an English company tried in vain to recover a call due on shares from an ambassador accredited to the Crown by a foreign state,<sup>18</sup> and so far is the doctrine carried that the household furniture in London even of a British subject, who is accredited to the Crown as Secretary to the Chinese Embassy, cannot be seized for the non-payment of pa ocial rates.<sup>19</sup> This case has the curious result that a British subject, in the circumstances narrated, is exempt from the local jurisdiction of his own country. The privileges and immunities of an ambassador, in relation to the state to which he

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7. *Parkinson v. Potter* (1885), 16 Q. B. D. 152; *Taylor v. Best* (1854), 14 C. B. 487; 23 L. J. C. P. 89; *Magdalena Steamship Co. v. Martin* (1859), 2 E. & E. 94; *Musurus Bey v. Gadban*, [1894] 1 O. B. 533; [1894] 2 Q. B. 352, C. A.

8. *Fisher v. Begrez* (1832), 2 L. J. Ex. 13; *Nelson*, 401; *Novello v. Toogood* (1823), 1 B. & C. 554, 562; *Macartney v. Garbutt* (1890), 24 Q. B. D. 368; *Musurus Bey v. Gadban*, cited supra.

9. *The Parlement Belge* (1880), 5 P. Div. 197.

10. 6 Beav. 1; 2 H. L. C. 1.

11. *The Parlement Belge*, cited supra.

12. *Taylor v. Best*, cited supra.

13. *Hopkins v. DeRobeck* (1789) 3 T. R. 79.

14. *Fisher v. Begrez* (1832), 2 L. J. Ex. 13.

15. *Wadsworth v. Queen of Spain* (1851), 17 Q. B. 171.

16. *Mighell v. Sultan of Johore*, cited supra.

17. *Magdalena Steamship Co. v. Martin*, cited supra.

18. Compare judgment of Wills J. in *Mighell v. Sultan of Johore*, cited supra, at pp. 149, 153, and *Musurus Bey v. Gadban*, cited supra.

19. *Macartney v. Garbutt*, cited supra.

is accredited, are (1) a right to inviolability of person; (2) exemption from the local criminal jurisdiction; (3) exemption from the local civil jurisdiction, which includes not being compellable to appear before the local court, even as a witness; (4) exemption from taxation. Liability for debts incurred, however, would not be avoided or evaded by, say, an ambassador from the King of Italy to the French Republic, who visited England and incurred debts here. An action in that case would certainly lie against the ambassador personally. *Mighell v. Sultan of Johore*<sup>20</sup> the principles of law laid down were (1) that the courts of this country had no jurisdiction over an independent foreign sovereign unless he submitted to the jurisdiction, and that such submission cannot take place until the jurisdiction has been invoked; (2) that the fact of a foreign sovereign entering into a contract in this country under an assumed name, and as a private individual, did not amount to a submission to the jurisdiction and (3) that a certificate from the Foreign Office, or Colonial Office, as the case may be, was conclusive as to the status of a foreign sovereign. It may be mentioned that an order for a stay of proceedings was made by the Divisional Court (Wills and Lawrance, JJ.) and confirmed by the Court of Appeal (Lord Esher, M. R., Lopes and Kay, L. JJ.).

The exceptions to the rule that no action can be entertained by the court against a foreign sovereign, diplomatic agent, or similar person, are two, namely, if any such, having appeared before the court voluntarily, waives his privilege and submits to the jurisdiction of the court.<sup>21</sup> It is, however, doubtful if submission by an ambassador to the jurisdiction of the court would be valid, because an old statute of Anne, called the Diplomatic Privileges Act,<sup>22</sup> "prohibits and makes null and void the issue of any writ or process against an ambassador, and not merely writs or processes in the nature of writs of execution." The other apparent exception to the rule is that the court has jurisdiction to entertain an action against a person belonging to the suite of an ambassador or diplomatic agent, if such person engages in trade.—*Law Quarterly Review*.

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20. Cited *supra*.

21. See the judgment of Esher, M.R. and Lopes, L.J., in *Mighell v. Sultan of Johore*, cited *supra*, at pp. 149, 157, 160; but compare the judgment of Wright, J., in *Musurus Bey v. Gadban*, cited *supra*; *Taylor v. Best*, cited *supra*.

22. (1708) 7 Anne, c. 12.